

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

REVA CLAYTON, as Personal Representative
for the Estate of VIRGIL SNEED, Deceased;
and CATHY JOHNSON, as Next Friend of
OMAR JOHNSON, a minor,

Case No. 05-60157

Honorable John Corbett O'Meara

Plaintiffs,

v.

PHILLIP E. DUPLESSIS and JONATHAN
HENRY, jointly and severally,

Defendants.

ORDER DENYING PLAINTIFFS' MARCH 29, 2007 MOTION TO AMEND

This matter came before the court on Plaintiffs' March 29, 2007 "Unobjected Motion to Amend Complaint to Include Pending State Law Claims." Defendants filed a response April 11, 2007, concurring in the relief sought by Plaintiffs. No oral argument was heard.

Defendants removed this action, one count of which arose under 42 U.S.C. § 1983, to this court June 9, 2005. A month later, the case was reassigned to this court from the docket of another judge. The complaint alleged six causes of action, the first five of which were brought under state law. Because state issues predominated Plaintiffs' complaint, this court remanded the five state law claims on August 24, 2005.

This court has set October 2, 2007, as the trial date for Count VI, the only remaining cause of action over which this court has jurisdiction. Counsel has advised that the trial date for the state law claims is May 7, 2007. In their motion, Plaintiffs seek to amend their complaint to add the

previously remanded state law claims so that this court can try both the federal and state claims in a single trial in October 2007.

Despite Defendants' counsel's concurrence in Plaintiffs' motion, the court will deny the motion. In remanding Plaintiffs' state claims nearly two years ago, the court considered the fact that state causes of actions predominated the complaint. Only one of the six causes of action was brought under federal statute, and there was no diversity of citizenship to confer federal subject matter jurisdiction. Furthermore, the parties have waited until the eve of trial in state court to attempt to stipulate to what is essentially a motion for reconsideration of this court's August 2005 order of partial remand. Pursuant to 28 U.S.C. § 1447(d), "An order remanding a case to the State court from which it was removed is not reviewable on appeal or otherwise"

For these reasons, it is hereby **ORDERED** that Plaintiffs' March 29, 2007 motion to amend the complaint to add the previously remanded state claims is **DENIED**.

s/John Corbett O'Meara
United States District Judge

Dated: April 30, 2007

I hereby certify that a copy of the foregoing document was served upon the parties of record on this date, April 30, 2007, by electronic and/or ordinary mail.

s/William Barkholz
Case Manager